

Tribally Controlled Schools Act of 1988

[Part B of Title V of Public Law 100–297]

[As Amended Through P.L. 107–110, Enacted January 8, 2002]

【Currency: This publication is a compilation of the text of Public Law 100-297. It was last amended by the public law listed in the As Amended Through note above and below at the bottom of each page of the pdf version and reflects current law through the date of the enactment of the public law listed at <https://www.govinfo.gov/app/collection/comps/>】

【Note: While this publication does not represent an official version of any Federal statute, substantial efforts have been made to ensure the accuracy of its contents. The official version of Federal law is found in the United States Statutes at Large and in the United States Code. The legal effect to be given to the Statutes at Large and the United States Code is established by statute (1 U.S.C. 112, 204).】

PART B—TRIBALLY CONTROLLED SCHOOL GRANTS

SEC. 5201. [25 U.S.C. 2501 note] SHORT TITLE.

This part may be cited as the “Tribally Controlled Schools Act of 1988”.

SEC. 5202. [25 U.S.C. 2501] DECLARATION OF POLICY.

(a) **RECOGNITION.**—Congress recognizes that the Indian Self-Determination and Education Assistance Act, which was a product of the legitimate aspirations and a recognition of the inherent authority of Indian nations, was and is a crucial positive step toward tribal and community control and that the United States has an obligation to assure maximum Indian participation in the direction of educational services so as to render the persons administering such services and the services themselves more responsive to the needs and desires of Indian communities.

(b) **COMMITMENT.**—Congress declares its commitment to the maintenance of the Federal Government’s unique and continuing trust relationship with and responsibility to the Indian people for the education of Indian children through the establishment of a meaningful Indian self-determination policy for education that will deter further perpetuation of Federal bureaucratic domination of programs.

(c) **NATIONAL GOAL.**—Congress declares that a national goal of the United States is to provide the resources, processes, and structure that will enable tribes and local communities to obtain the quantity and quality of educational services and opportunities that will permit Indian children—

- (1) to compete and excel in areas of their choice; and
- (2) to achieve the measure of self-determination essential to their social and economic well-being.

(d) **EDUCATIONAL NEEDS.**—Congress affirms—

(1) true self-determination in any society of people is dependent upon an educational process that will ensure the development of qualified people to fulfill meaningful leadership roles;

(2) that Indian people have special and unique educational needs, including the need for programs to meet the linguistic and cultural aspirations of Indian tribes and communities; and

(3) that those needs may best be met through a grant process.

(e) **FEDERAL RELATIONS.**—Congress declares a commitment to the policies described in this section and support, to the full extent of congressional responsibility, for Federal relations with the Indian nations.

(f) **TERMINATION.**—Congress repudiates and rejects House Concurrent Resolution 108 of the 83d Congress and any policy of unilateral termination of Federal relations with any Indian nation.

SEC. 5203. [25 U.S.C. 2502] GRANTS AUTHORIZED.

(a) **IN GENERAL.**—

(1) **ELIGIBILITY.**—The Secretary shall provide grants to Indian tribes, and tribal organizations that—

(A) operate contract schools under title XI of the Education Amendments of 1978 and notify the Secretary of their election to operate the schools with assistance under this part rather than continuing the schools as contract schools;

(B) operate other tribally controlled schools eligible for assistance under this part and submit applications (which are approved by their tribal governing bodies) to the Secretary for such grants; or

(C) elect to assume operation of Bureau-funded schools with the assistance under this part and submit applications (which are approved by their tribal governing bodies) to the Secretary for such grants.

(2) **DEPOSIT OF FUNDS.**—Grants provided under this part shall be deposited into the general operating fund of the tribally controlled school with respect to which the grant is made.

(3) **USE OF FUNDS.**—

(A) **IN GENERAL.**—Except as otherwise provided in this paragraph, grants provided under this part shall be used to defray, at the discretion of the school board of the tribally controlled school with respect to which the grant is provided, any expenditures for education related activities for which any funds that compose the grant may be used under the laws described in section 5205(a), including expenditures for—

(i) school operations, academic, educational, residential, guidance and counseling, and administrative purposes; and

(ii) support services for the school, including transportation.

(B) **EXCEPTION.**—Grants provided under this part may, at the discretion of the school board of the tribally controlled school with respect to which such grant is provided,

be used to defray operations and maintenance expenditures for the school if any funds for the operation and maintenance of the school are allocated to the school under the provisions of any of the laws described in section 5205(a).

(b) LIMITATIONS.—

(1) ONE GRANT PER TRIBE OR ORGANIZATION PER FISCAL YEAR.—Not more than one grant may be provided under this part with respect to any Indian tribe or tribal organization for any fiscal year.

(2) NONSECTARIAN USE.—Funds provided under any grant made under this part may not be used in connection with religious worship or sectarian instruction.

(3) ADMINISTRATIVE COSTS LIMITATION.—Funds provided under any grant under this part may not be expended for administrative costs (as defined in section 1128(h)(1) of the Education Amendments of 1978) in excess of the amount generated for such costs under section 1128 of such Act.

(c) LIMITATION ON TRANSFER OF FUNDS AMONG SCHOOL SITES.—

(1) IN GENERAL.—In the case of a grantee that operates schools at more than one school site, the grantee may expend at any school site operated by the grantee not more than the lesser of—

(A) 10 percent of the funds allocated for another school site under section 1128 of the Education Amendments of 1978; or

(B) \$400,000 of the funds allocated for another school site.

(2) DEFINITION OF SCHOOL SITE.—For purposes of this subsection, the term “school site” means the physical location and the facilities of an elementary or secondary educational or residential program operated by, or under contract or grant with, the Bureau for which a discreet student count is identified under the funding formula established under section 1127 of the Education Amendments of 1978.

(d) NO REQUIREMENT TO ACCEPT GRANTS.—Nothing in this part may be construed—

(1) to require a tribe or tribal organization to apply for or accept; or

(2) to allow any person to coerce any tribe or tribal organization to apply for, or accept,

a grant under this part to plan, conduct, and administer all of, or any portion of, any Bureau program. Such applications and the timing of such applications shall be strictly voluntary. Nothing in this part may be construed as allowing or requiring any grant with any entity other than the entity to which the grant is provided.

(e) NO EFFECT ON FEDERAL RESPONSIBILITY.—Grants provided under this part shall not terminate, modify, suspend, or reduce the responsibility of the Federal Government to provide a program.

(f) RETROCESSION.—

(1) IN GENERAL.—Whenever a tribal governing body requests retrocession of any program for which assistance is provided under this part, such retrocession shall become effective

upon a date specified by the Secretary that is not later than 120 days after the date on which the tribal governing body requests the retrocession. A later date may be specified if mutually agreed upon by the Secretary and the tribal governing body. If such a program is retroceded, the Secretary shall provide to any Indian tribe served by such program at least the same quantity and quality of services that would have been provided under such program at the level of funding provided under this part prior to the retrocession.

(2) **STATUS AFTER RETROCESSION.**—The tribe requesting retrocession shall specify whether the retrocession is to status as a Bureau-operated school or as a school operated under contract under the Indian Self-Determination and Education Assistance Act.

(3) **TRANSFER OF EQUIPMENT AND MATERIALS.**—Except as otherwise determined by the Secretary, the tribe or tribal organization operating the program to be retroceded must transfer to the Secretary (or to the tribe or tribal organization which will operate the program as a contract school) the existing equipment and materials which were acquired—

(A) with assistance under this part; or

(B) upon assumption of operation of the program under this part, if the school was a Bureau-funded school under title XI of the Education Amendments of 1978 before receiving assistance under this part.

(g) **PROHIBITION OF TERMINATION FOR ADMINISTRATIVE CONVENIENCE.**—Grants provided under this part may not be terminated, modified, suspended, or reduced solely for the convenience of the administering agency.

SEC. 5204. [25 U.S.C. 2503] COMPOSITION OF GRANTS.

(a) **IN GENERAL.**—The grant provided under this part to an Indian tribe or tribal organization for any fiscal year shall consist of—

(1) the total amount of funds allocated for such fiscal year under sections 1127 and 1128 of the Education Amendments of 1978 with respect to the tribally controlled schools eligible for assistance under this part which are operated by such Indian tribe or tribal organization, including, but not limited to, funds provided under such sections, or under any other provision of law, for transportation costs;

(2) to the extent requested by such Indian tribe or tribal organization, the total amount of funds provided from operations and maintenance accounts and, notwithstanding section 105 of the Indian Self-Determination Act, or any other provision of law, other facilities accounts for such schools for such fiscal year (including but not limited to those referenced under section 1126(d) of the Education Amendments of 1978 or any other law); and

(3) the total amount of funds that are allocated to such schools for such fiscal year under—

(A) title I of the Elementary and Secondary Education Act of 1965;

- (B) the Individuals with Disabilities Education Act;
and
(C) any other Federal education law, that are allocated to such schools for such fiscal year.
- (b) SPECIAL RULES.—
- (1) IN GENERAL.—
- (A) APPLICABILITY OF CERTAIN LAWS.—Funds allocated to a tribally controlled school by reason of paragraph (1) or (2) of subsection (a) shall be subject to the provisions of this part and shall not be subject to any additional restriction, priority, or limitation that is imposed by the Bureau with respect to funds provided under—
- (i) title I of the Elementary and Secondary Education Act of 1965;
- (ii) the Individuals with Disabilities Education Act; or
- (iii) any Federal education law other than title XI of the Education Amendments of 1978.
- (B) APPLICABILITY OF BUREAU PROVISIONS.—Indian tribes and tribal organizations to which grants are provided under this part, and tribally controlled schools for which such grants are provided, shall not be subject to any requirements, obligations, restrictions, or limitations imposed by the Bureau that would otherwise apply solely by reason of the receipt of funds provided under any law referred to in clause (i), (ii), or (iii) of subparagraph (A).
- (2) SCHOOLS CONSIDERED CONTRACT SCHOOLS.—Tribally controlled schools for which grants are provided under this part shall be treated as contract schools for the purposes of allocation of funds under sections 1126(e), 1127, and 1128 of the Education Amendments of 1978.
- (3) SCHOOLS CONSIDERED BUREAU SCHOOLS.—Tribally controlled schools for which grants are provided under this chapter shall be treated as Bureau schools for the purposes of allocation of funds provided under—
- (A) title I of the Elementary and Secondary Education Act of 1965;
- (B) the Individuals with Disabilities Education Act; and
- (C) any other Federal education law, that are distributed through the Bureau.
- (4) ACCOUNTS; USE OF CERTAIN FUNDS.—
- (A) SEPARATE ACCOUNT.—
- (i) IN GENERAL.—Notwithstanding section 5204(a)(2), with respect to funds from facilities improvement and repair, alteration and renovation (major or minor), health and safety, or new construction accounts included in the grant provided under section 5204(a), the grant recipient shall maintain a separate account for such funds.
- (ii) SUBMISSION OF ACCOUNTING.—At the end of the period designated for the work covered by the funds received, the grant recipient shall submit to the

Secretary a separate accounting of the work done and the funds expended.

(iii) **USE OF FUNDS.**—Funds received from those accounts may only be used for the purpose for which the funds were appropriated and for the work encompassed by the application or submission for which the funds were received.

(iv) **COMPLETION OF PROJECT.**—Upon completion of a project for which a separate account is established under this paragraph, the portion of the grant related to such project may be closed out upon agreement by the grantee and the Secretary.

(B) **REQUIREMENTS FOR PROJECTS.**—

(i) **REGULATORY REQUIREMENTS.**—With respect to a grant to a tribally controlled school under this part for new construction or facilities improvements and repair in excess of \$100,000, such grant shall be subject to the Administrative and Audit Requirements and Cost Principles for Assistance Programs contained in part 12 of title 43, Code of Federal Regulations.

(ii) **EXCEPTION.**—Notwithstanding clause (i), grants described in such clause shall not be subject to section 12.61 of title 43, Code of Federal Regulations. The Secretary and the grantee shall negotiate and determine a schedule of payments for the work to be performed.

(iii) **APPLICATIONS.**—In considering applications for a grant described in clause (i), the Secretary shall consider whether the Indian tribe or tribal organization involved would be deficient in ensuring that the construction projects under the proposed grant conform to applicable building standards and codes and Federal, tribal, or State health and safety standards as required under section 1124 of the Education Amendments of 1978 (25 U.S.C. 2005(a)) with respect to organizational and financial management capabilities.

(iv) **DISPUTES.**—Any disputes between the Secretary and any grantee concerning a grant described in clause (i) shall be subject to the dispute provisions contained in section 5209(e).

(C) **NEW CONSTRUCTION.**—Notwithstanding subparagraph (A), a school receiving a grant under this part for facilities improvement and repair may use such grant funds for new construction if the tribal governing body or tribal organization that submits the application for the grant provides funding for the new construction equal to at least 25 percent of the total cost of such new construction.

(D) **PERIOD.**—In a case in which the appropriations measure under which the funds described in subparagraph (A) are made available or the application submitted for the funds does not stipulate a period for the work covered by the funds, the Secretary and the grant recipient shall consult and determine such a period prior to the transfer of

the funds. A period so determined may be extended upon mutual agreement of the Secretary and the grant recipient.

(5) ENFORCEMENT OF REQUEST TO INCLUDE FUNDS.—

(A) IN GENERAL.—If the Secretary fails to carry out a request filed by an Indian tribe or tribal organization to include in such tribe or organization's grant under this part the funds described in subsection (a)(2) within 180 days after the filing of the request, the Secretary shall—

(i) be deemed to have approved such request; and

(ii) immediately upon the expiration of such 180-day period amend the grant accordingly.

(B) RIGHTS.—A tribe or organization described in subparagraph (A) may enforce its rights under subsection (a)(2) and this paragraph, including rights relating to any denial or failure to act on such tribe's or organization's request, pursuant to the dispute authority described in section 5209(e).

SEC. 5205. [25 U.S.C. 2504] ELIGIBILITY FOR GRANTS.

(a) RULES.—

(1) IN GENERAL.—A tribally controlled school is eligible for assistance under this part if the school—

(A) on April 28, 1988, was a contract school under title XI of the Education Amendments of 1978 and the tribe or tribal organization operating the school submits to the Secretary a written notice of election to receive a grant under this part;

(B) was a Bureau-operated school under title XI of the Education Amendments of 1978 and has met the requirements of subsection (b);

(C) is a school for which the Bureau has not provided funds, but which has met the requirements of subsection (c); or

(D) is a school with respect to which an election has been made under paragraph (2) and which has met the requirements of subsection (b).

(2) NEW SCHOOLS.—Any application which has been submitted under the Indian Self-Determination and Education Assistance Act by an Indian tribe for a school which is not in operation on the date of enactment of the Native American Education Improvement Act of 2001 shall be reviewed under the guidelines and regulations for applications submitted under the Indian Self-Determination and Education Assistance Act that were in effect at the time the application was submitted, unless the Indian tribe or tribal organization elects to have the application reviewed under the provisions of subsection (b).

(b) ADDITIONAL REQUIREMENTS FOR BUREAU-FUNDED SCHOOLS AND CERTAIN ELECTING SCHOOLS.—

(1) BUREAU-FUNDED SCHOOLS.—A school that was a Bureau-funded school under title XI of the Education Amendments of 1978 on the date of enactment of the Native American Education Improvement Act of 2001 and any school with

respect to which an election is made under subsection (a)(2), meets the requirements of this subsection if—

(A) the Indian tribe or tribal organization that operates, or desires to operate, the school submits to the Secretary an application requesting that the Secretary—

(i) transfer operation of the school to the Indian tribe or tribal organization, if the Indian tribe or tribal organization is not already operating the school; and

(ii) make a determination as to whether the school is eligible for assistance under this part; and

(B) the Secretary makes a determination that the school is eligible for assistance under this part.

(2) CERTAIN ELECTING SCHOOLS.—

(A) IN GENERAL.—By not later than the date that is 120 days after the date on which an application is submitted to the Secretary under paragraph (1)(A), the Secretary shall determine—

(i) in the case of a school which is not being operated by the Indian tribe or tribal organization, whether to transfer operation of the school to the Indian tribe or tribal organization; and

(ii) whether the school is eligible for assistance under this part.

(B) OTHER DETERMINATIONS.—In considering applications submitted under paragraph (1)(A), the Secretary—

(i) shall transfer operation of the school to the Indian tribe or tribal organization, if the tribe or tribal organization is not already operating the school; and

(ii) shall determine that the school is eligible for assistance under this part, unless the Secretary finds by clear and convincing evidence that the services to be provided by the Indian tribe or tribal organization will be deleterious to the welfare of the Indians served by the school.

(C) CONSIDERATIONS.—In considering applications submitted under paragraph (1)(A), the Secretary shall consider whether the Indian tribe or tribal organization would be deficient in operating the school with respect to—

(i) equipment;

(ii) bookkeeping and accounting procedures;

(iii) ability to adequately manage a school; or

(iv) adequately trained personnel.

(c) ADDITIONAL REQUIREMENTS FOR A SCHOOL WHICH IS NOT A BUREAU-FUNDED SCHOOL.—

(1) IN GENERAL.—A school which is not a Bureau-funded school under title XI of the Education Amendments of 1978 meets the requirements of this subsection if—

(A) the Indian tribe or tribal organization that operates, or desires to operate, the school submits to the Secretary an application requesting a determination by the Secretary as to whether the school is eligible for assistance under this part; and

(B) the Secretary makes a determination that a school is eligible for assistance under this part.

(2) DEADLINE FOR DETERMINATION BY SECRETARY.—

(A) IN GENERAL.—By not later than the date that is 180 days after the date on which an application is submitted to the Secretary under paragraph (1)(A), the Secretary shall determine whether the school is eligible for assistance under this part.

(B) CONSIDERATIONS.—In making the determination under subparagraph (A), the Secretary shall give equal consideration to each of the following factors:

(i) With respect to the applicant's proposal—

(I) the adequacy of facilities or the potential to obtain or provide adequate facilities;

(II) geographic and demographic factors in the affected areas;

(III) adequacy of the applicant's program plans;

(IV) geographic proximity of comparable public education; and

(V) the needs as expressed by all affected parties, including but not limited to students, families, tribal governments at both the central and local levels, and school organizations.

(ii) With respect to all education services already available—

(I) geographic and demographic factors in the affected areas;

(II) adequacy and comparability of programs already available;

(III) consistency of available programs with tribal education codes or tribal legislation on education; and

(IV) the history and success of these services for the proposed population to be served, as determined from all factors including, if relevant, standardized examination performance.

(C) GEOGRAPHIC PROXIMITY.—The Secretary may not make a determination under this paragraph that is primarily based upon the geographic proximity of comparable public education.

(D) OTHER INFORMATION.—Applications submitted under paragraph (1)(A) shall include information on the factors described in subparagraph (B)(i), but the applicant may also provide the Secretary such information relative to the factors described in subparagraph (B)(ii) as the applicant considers appropriate.

(E) DEADLINE.—If the Secretary fails to make a determination under subparagraph (A) with respect to an application within 180 days after the date on which the Secretary received the application, the Secretary shall be treated as having made a determination that the tribally controlled school is eligible for assistance under the title and the grant shall become effective 18 months after the date on which the Secretary received the application, or on an earlier date, at the Secretary's discretion.

(d) FILING OF APPLICATIONS AND REPORTS.—

(1) IN GENERAL.—All applications and reports submitted to the Secretary under this part, and any amendments to such applications or reports, shall be filed with the education line officer designated by the Director of the Office of Indian Education Programs of the Bureau of Indian Affairs. The date on which such filing occurs shall, for purposes of this part, be treated as the date on which the application or amendment was submitted to the Secretary.

(2) SUPPORTING DOCUMENTATION.—Any application that is submitted under this chapter shall be accompanied by a document indicating the action taken by the tribal governing body in authorizing such application.

(e) EFFECTIVE DATE FOR APPROVED APPLICATIONS.—Except as provided by subsection (c)(2)(E), a grant provided under this part, and any transfer of the operation of a Bureau school made under subsection (b), shall become effective beginning the academic year succeeding the fiscal year in which the application for the grant or transfer is made, or at an earlier date determined by the Secretary.

(f) DENIAL OF APPLICATIONS.—

(1) IN GENERAL.—Whenever the Secretary refuses to approve a grant under this chapter, to transfer operation of a Bureau school under subsection (b), or determines that a school is not eligible for assistance under this part, the Secretary shall—

(A) state the objections in writing to the tribe or tribal organization within the allotted time;

(B) provide assistance to the tribe or tribal organization to overcome all stated objections;

(C) at the request of the tribe or tribal organization, provide the tribe or tribal organization a hearing on the record under the same rules and regulations that apply under the Indian Self-Determination and Education Assistance Act; and

(D) provide an opportunity to appeal the objection raised.

(2) TIMELINE FOR RECONSIDERATION OF AMENDED APPLICATIONS.—The Secretary shall reconsider any amended application submitted under this part within 60 days after the amended application is submitted to the Secretary.

(g) REPORT.—The Bureau shall submit an annual report to the Congress on all applications received, and actions taken (including the costs associated with such actions), under this section at the same time that the President is required to submit to Congress the budget under section 1105 of title 31, United States Code.

SEC. 5206. [25 U.S.C. 2505] DURATION OF ELIGIBILITY DETERMINATION.

(a) IN GENERAL.—If the Secretary determines that a tribally controlled school is eligible for assistance under this part, the eligibility determination shall remain in effect until the determination is revoked by the Secretary, and the requirements of subsection (b) or (c) of section 5205, if applicable, shall be considered to have been met with respect to such school until the eligibility determination is revoked by the Secretary.

(b) ANNUAL REPORTS.—

(1) IN GENERAL.—Each recipient of a grant provided under this part shall complete an annual report which shall be limited to—

(A) an annual financial statement reporting revenue and expenditures as defined by the cost accounting established by the grantee;

(B) an annual financial audit conducted pursuant to the standards of the Single Audit Act of 1984;

(C) a biennial compliance audit of the procurement of personal property during the period for which the report is being prepared that shall be in compliance with written procurement standards that are developed by the local school board;

(D) an annual submission to the Secretary of the number of students served and a brief description of programs offered under the grant; and

(E) a program evaluation conducted by an impartial evaluation review team, to be based on the standards established for purposes of subsection (c)(1)(A)(ii).

(2) EVALUATION REVIEW TEAMS.—Where appropriate, other tribally controlled schools and representatives of tribally controlled community colleges shall make up members of the evaluation review teams.

(3) EVALUATIONS.—In the case of a school which is accredited, evaluations will be conducted at intervals under the terms of accreditation.

(4) SUBMISSION OF REPORT.—

(A) TO TRIBAL GOVERNING BODY.—Upon completion of the report required under paragraph (1), the recipient of the grant shall send (via first class mail, return receipt requested) a copy of such annual report to the tribal governing body (as defined in section 1132(f) of the Education Amendments of 1978) of the tribally controlled school.

(B) TO SECRETARY.—Not later than 30 days after receiving written confirmation that the tribal governing body has received the report sent pursuant to subparagraph (A), the recipient of the grant shall send a copy of the report to the Secretary.

(c) REVOCATION OF ELIGIBILITY.—

(1) DETERMINATION OF ELIGIBILITY FOR ASSISTANCE.—The Secretary shall not revoke a determination that a school is eligible for assistance under this part if—

(A) the Indian tribe or tribal organization submits the reports required under subsection (b) with respect to the school; and

(B) at least one of the following clauses applies with respect to the school:

(i) The school is certified or accredited by a State or regional accrediting association or is a candidate in good standing for such accreditation under the rules of the State or regional accrediting association, showing that credits achieved by the students within the edu-

cation programs are, or will be, accepted at grade level by a State certified or regionally accredited institution.

(ii) The Secretary determines that there is a reasonable expectation that the certification or accreditation described in clause (i), or candidacy in good standing for such certification or accreditation, will be achieved by the school within 3 years. The school seeking accreditation shall remain under the standards of the Bureau in effect on the date of enactment of the Native American Education Improvement Act of 2001 until such time as the school is accredited, except that if the Bureau standards are in conflict with the standards of the accrediting agency, the standards of such agency shall apply in such case.

(iii) The school is accredited by a tribal department of education if such accreditation is accepted by a generally recognized regional or State accreditation agency.

(iv)(I) With respect to a school that lacks accreditation, or that is not a candidate for accreditation, based on circumstances that are not beyond the control of the school board, every 3 years an impartial evaluator agreed upon by the Secretary and the grant recipient conducts evaluations of the school, and the school receives a positive assessment under such evaluations. The evaluations are conducted under standards adopted by a contractor under a contract for the school entered into under the Indian Self-Determination and Education Assistance Act (or revisions of such standards agreed to by the Secretary and the grant recipient) prior to the date of enactment of the Native American Education Improvement Act of 2001.

(II) If the Secretary and a grant recipient other than a tribal governing body fail to agree on such an evaluator, the tribal governing body shall choose the evaluator or perform the evaluation. If the Secretary and a grant recipient that is a tribal governing body fail to agree on such an evaluator, subclause (I) shall not apply.

(III) A positive assessment by an impartial evaluator under this clause shall not affect the revocation of a determination of eligibility by the Secretary where such revocation is based on circumstances that were within the control of the school board.

(2) NOTICE REQUIREMENTS FOR REVOCATION.—The Secretary shall not revoke a determination that a school is eligible for assistance under this part, or reassume control of a school that was a Bureau school prior to approval of an application submitted under section 5206(b)(1)(A) until the Secretary—

(A) provides notice to the tribally controlled school and the tribal governing body (within the meaning of section 1141 of the Education Amendments of 1978) of the tribally controlled school which states—

(i) the specific deficiencies that led to the revocation or resumption determination; and

(ii) the actions that are needed to remedy such deficiencies; and

(B) affords such authority an opportunity to effect the remedial actions.

(3) TECHNICAL ASSISTANCE.—The Secretary shall provide such technical assistance to enable the school and governing body to carry out such remedial actions.

(4) HEARING AND APPEAL.—In addition to notice and technical assistance under this subsection, the Secretary shall provide to the school and governing body—

(A) at the request of the school or governing body, a hearing on the record regarding the revocation or reassumption determination, to be conducted under the rules and regulations described in section 5206(f)(1)(C); and

(B) an opportunity to appeal the decision resulting from the hearing.

(d) APPLICABILITY OF SECTION PURSUANT TO ELECTION UNDER SECTION 5208(b).—With respect to a tribally controlled school that receives assistance under this part pursuant to an election made under section 5208(b)—

(1) subsection (b) of this section shall apply; and

(2) the Secretary may not revoke eligibility for assistance under this part except in conformance with subsection (c) of this section.

SEC. 5207. [25 U.S.C. 2506] PAYMENT OF GRANTS; INVESTMENT OF FUNDS.

(a) PAYMENTS.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the Secretary shall make payments to grantees under this part in two payments, of which—

(A) the first payment shall be made not later than July 1 of each year in an amount equal to 80 percent of the amount which the grantee was entitled to receive during the preceding academic year; and

(B) the second payment, consisting of the remainder to which the grantee is entitled for the academic year, shall be made not later than December 1 of each year.

(2) EXCESS FUNDING.—In a case in which the amount provided to a grant recipient under paragraph (1)(A) is in excess of the amount that the recipient is entitled to receive for the academic year involved, the recipient shall return to the Secretary such excess amount not later than 30 days after the final determination that the school was overpaid pursuant to this section. The amount returned to the Secretary under this paragraph shall be distributed equally to all schools in the system.

(3) NEWLY FUNDED SCHOOLS.—For any school for which no payment under this part was made from Bureau funds in the preceding academic year, full payment of the amount computed for the first academic year of eligibility under this part shall be made not later than December 1 of the academic year.

(4) LATE FUNDING.—With regard to funds for grantees that become available for obligation on October 1 of the fiscal year for which such funds are appropriated, the Secretary shall make payments to grantees not later than December 1 of the fiscal year.

(5) APPLICABILITY OF CERTAIN TITLE 31 PROVISIONS.—The provisions of chapter 39 of title 31, United States Code, shall apply to the payments required to be made by paragraphs (1), (3), and (4).

(6) RESTRICTIONS.—Paragraphs (1), (3), and (4) shall be subject to any restriction on amounts of payments under this part that are imposed by a continuing resolution or other Act appropriating the funds involved.

(b) INVESTMENT OF FUNDS.—

(1) TREATMENT OF INTEREST AND INVESTMENT INCOME.—Notwithstanding any other provision of law, any interest or investment income that accrues to any funds provided under this part after such funds are paid to the Indian tribe or tribal organization and before such funds are expended for the purpose for which such funds were provided under this part shall be the property of the Indian tribe or tribal organization and shall not be taken into account by any officer or employee of the Federal Government in determining whether to provide assistance, or the amount of assistance, under any provision of Federal law. Such interest income shall be spent on behalf of the school.

(2) PERMISSIBLE INVESTMENTS.—Funds provided under this part may be invested by the Indian tribe or tribal organization before such funds are expended for the purposes of this part so long as such funds are—

(A) invested by the Indian tribe or tribal organization only in obligations of the United States, or in obligations or securities that are guaranteed or insured by the United States, or mutual (or other) funds registered with the Securities and Exchange Commission and which only invest in obligations of the United States, or securities that are guaranteed or insured by the United States; or

(B) deposited only into accounts that are insured by and agency or instrumentality of the United States, or are fully collateralized to ensure protection of the funds, even in the event of a bank failure.

(c) RECOVERIES.—For the purposes of underrecovery and overrecovery determinations by any Federal agency for any other funds, from whatever source derived, funds received under this part shall not be taken into consideration.

SEC. 5208. [25 U.S.C. 2507] APPLICATION WITH RESPECT TO INDIAN SELF-DETERMINATION AND EDUCATION ASSISTANCE ACT.

(a) CERTAIN PROVISIONS TO APPLY TO GRANTS.—The following provisions of the Indian Self-Determination and Education Assistance Act (and any subsequent revisions thereto or renumbering thereof), shall apply to grants provided under this part:

(1) Section 5(f) (relating to single agency audit).

(2) Section 6 (relating to criminal activities; penalties).

- (3) Section 7 (relating to wage and labor standards).
- (4) Section 104 (relating to retention of Federal employee coverage).
- (5) Section 105(f) (relating to Federal property).
- (6) Section 105(k) (relating to access to Federal sources of supply).
- (7) Section 105(l) (relating to lease of facility used for administration and delivery of services).
- (8) Section 106(f) (relating to limitation on remedies relating to cost allowances).
- (9) Section 106(j) (relating to use of funds for matching or cost participation requirements).
- (10) Section 106(k) (relating to allowable uses of funds).
- (11) Section 108(c) (Model Agreements provisions (1)(a)(5) (relating to limitations of costs), (1)(a)(7) (relating to records and monitoring), (1)(a)(8) (relating to property), and (a)(1)(9) (relating to availability of funds).
- (12) Section 109 (relating to reassumption).
- (13) Section 111 (relating to sovereign immunity and trusteeship rights unaffected).
- (b) ELECTION FOR GRANT IN LIEU OF CONTRACT.—
 - (1) IN GENERAL.—Contractors for activities to which this part applies who have entered into a contract under the Indian Self-Determination and Education Assistance Act that is in effect on the date of enactment of the Native American Education Improvement Act of 2001 may, by giving notice to the Secretary, elect to have the provisions of this part apply to such activity in lieu of such contract.
 - (2) EFFECTIVE DATE OF ELECTION.—Any election made under paragraph (1) shall take effect on the first day of July immediately following the date of such election.
 - (3) EXCEPTION.—In any case in which the first day of July immediately following the date of an election under paragraph (1) is less than 60 days after such election, such election shall not take effect until the first day of July of year following the year in which the election is made.
- (c) NO DUPLICATION.—No funds may be provided under any contract entered into under the Indian Self-Determination and Education Assistance Act to pay any expenses incurred in providing any program or services if a grant has been made under this part to pay such expenses.
- (d) TRANSFERS AND CARRYOVERS.—
 - (1) BUILDINGS, EQUIPMENT, SUPPLIES, MATERIALS.—A tribe or tribal organization assuming the operation of—
 - (A) a Bureau school with assistance under this part shall be entitled to the transfer or use of buildings, equipment, supplies, and materials to the same extent as if it were contracting under the Indian Self-Determination and Education Assistance Act; or
 - (B) a contract school with assistance under this part shall be entitled to the transfer or use of buildings, equipment, supplies, and materials that were used in the operation of the contract school to the same extent as if it were

contracting under the Indian Self-Determination and Education Assistance Act.

(2) FUNDS.—Any tribe or tribal organization which assumes operation of a Bureau school with assistance under this part and any tribe or tribal organization which elects to operate a school with assistance under this part rather than to continue as a contract school shall be entitled to any funds which would carryover from the previous fiscal year as if such school were operated as a contract school.

(3) FUNDING FOR SCHOOL IMPROVEMENT.—Any tribe or tribal organization that assumes operation of a Bureau school or a contract school with assistance under this part shall be eligible for funding for the improvement, alteration, replacement, and repair of facilities to the same extent as a Bureau school.

(e) EXCEPTIONS, PROBLEMS, AND DISPUTES.—Any exception or problem cited in an audit conducted pursuant to section 5206(b)(1), any dispute regarding a grant authorized to be made pursuant to this part or any amendment to such grant, and any dispute involving an administrative cost grant under section 1128 of the Education Amendments of 1978 shall be administered under the provisions governing such exceptions, problems, or disputes in the case of contracts under the Indian Self-Determination and Education Assistance Act. The Equal Access to Justice Act shall apply to administrative appeals filed after September 8, 1988, by grantees regarding a grant under this part, including an administrative cost grant.

SEC. 5209. [25 U.S.C. 2508] ROLE OF THE DIRECTOR.

Applications for grants under this part, and all application modifications, shall be reviewed and approved by personnel under the direction and control of the Director of the Office of Indian Education Programs. Required reports shall be submitted to education personnel under the direction and control of the Director of such Office.

SEC. 5210. [25 U.S.C. 2509] REGULATIONS.

The Secretary is authorized to issue regulations relating to the discharge of duties specifically assigned to the Secretary in this part. For all other matters relating to the details of planning, developing, implementing, and evaluating grants under this part, the Secretary shall not issue regulations.

SEC. 5211. [25 U.S.C. 2510] THE TRIBALLY CONTROLLED GRANT SCHOOL ENDOWMENT PROGRAM.

(a) IN GENERAL.—

(1) ESTABLISHMENT.—Each school receiving a grant under this part may establish, at a federally insured financial institution, a trust fund for the purposes of this section.

(2) DEPOSITS AND USE.—The school may provide—

(A) for deposit into the trust fund, only funds from non-Federal sources, except that the interest on funds received from grants provided under this part may be used for that purpose;

(B) for deposit into the trust fund, any earnings on funds deposited in the fund; and

(C) for the sole use of the school any noncash, in-kind contributions of real or personal property, which may at any time be used, sold, or otherwise disposed of.

(b) INTEREST.—Interest from the fund established under subsection (a) may periodically be withdrawn and used, at the discretion of the school, to defray any expenses associated with the operation of the school consistent with the purposes of this Act.

SEC. 5212. [25 U.S.C. 2511] DEFINITIONS.

In this part:

(1) BUREAU.—The term “Bureau” means the Bureau of Indian Affairs of the Department of the Interior.

(2) ELIGIBLE INDIAN STUDENT.—The term “eligible Indian student” has the meaning given such term in section 1127(f) of the Education Amendments of 1978.

(3) INDIAN.—The term “Indian” means a member of an Indian tribe, and includes individuals who are eligible for membership in a tribe, and the child or grandchild of such an individual.

(4) INDIAN TRIBE.—The term “Indian tribe” means any Indian tribe, band, nation, or other organized group or community, including an Alaska Native Village Corporation or Regional Corporation (as defined in or established pursuant to the Alaska Native Claims Settlement Act), which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

(5) LOCAL EDUCATIONAL AGENCY.—The term “local educational agency” means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary schools or secondary schools in a city, county, township, school district, or other political subdivision of a State or such combination of school districts or counties as are recognized in a State as an administrative agency for the State’s public elementary schools or secondary schools. Such term includes any other public institution or agency having administrative control and direction of a public elementary school or secondary school.

(6) SECRETARY.—The term “Secretary” means the Secretary of the Interior.

(7) TRIBAL GOVERNING BODY.—The term “tribal governing body” means, with respect to any school that receives assistance under this Act, the recognized governing body of the Indian tribe involved.

(8) TRIBAL ORGANIZATION.—

(A) IN GENERAL.—The term “tribal organization” means—

(i) the recognized governing body of any Indian tribe; or

(ii) any legally established organization of Indians that—

(I) is controlled, sanctioned, or chartered by such governing body or is democratically elected

by the adult members of the Indian community to be served by such organization; and

(II) includes the maximum participation of Indians in all phases of the organization's activities.

(B) AUTHORIZATION.—In any case in which a grant is provided under this part to an organization to provide services through a tribally controlled school benefiting more than one Indian tribe, the approval of the governing bodies of Indian tribes representing 80 percent of the students attending the tribally controlled school shall be considered a sufficient tribal authorization for such grant.

(9) TRIBALLY CONTROLLED SCHOOL.—The term “tribally controlled school” means a school that—

(A) is operated by an Indian tribe or a tribal organization, enrolling students in kindergarten through grade 12, including a preschool;

(B) is not a local educational agency; and

(C) is not directly administered by the Bureau of Indian Affairs.